



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

2006 APR -6 PM 1:30

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO: RCRA-08-2006-0001

IN THE MATTER OF:

RED EAGLE OIL, INC. (f/k/a Hinze, Inc.)

P. O. Box 2468

Cody, WY 82414

(Red Eagle Food Store #19 Facility

203 N. Federal Boulevard

Riverton, WY 82501)

Respondent.

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

April 6, 2006  
DATE

Carol A. LeBoo  
Carol A. LeBoo, Acting  
Regional Judicial Officer

2006 APR -6 PM 1:30

Docket No. RCRA-08-2006-0001

## CONSENT AGREEMENT

Respondent.

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-0001  
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- ## **FACTUAL AND PROCEDURAL BACKGROUND**

2. On October 25, 2005, Complainant issued Respondent a Complaint and Notice of Opportunity for Hearing (AComplaint@) for alleged violations at Respondent's Red Eagle Food Store #19 facility ("facility") of RCRA ' 9003(c), 42 U.S.C. ' 6991b(c), and the underground

storage tank regulations set forth at 40 CFR part 280, subpart D. The Complaint alleges that the Respondent failed to comply with the federal UST regulations at three underground storage tanks located at the facility. The Complaint proposes a penalty for the alleged violations.

3. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

4. Respondent neither admits nor denies the specific factual allegations of the Complaint or the Consent Agreement.

5. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or the Consent Agreement.

6. The Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, the Consent Agreement applies to and is binding upon Complainant and Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 7 has been paid. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under the Consent Agreement.

7. Pursuant to section 9006(d)(2)(C) of RCRA, 42 U.S.C. ' 6991e(d)(2)(C), the seriousness of the violations and any good faith efforts by Respondent to comply, Complainant determined that an appropriate civil penalty to settle this action is in the amount of six thousand dollars (\$6,000).

## TERMS OF SETTLEMENT

8. Respondent consents to the issuance of the Consent Agreement and, for the purposes of settlement, to the payment of the civil penalty cited in paragraph no. 7 above.

9. Respondent consents and agrees to pay one-quarter of the total civil penalty in the amount of one thousand five hundred dollars (\$1,500), in the manner described below in this paragraph:

- a. Payment is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting by regular mail a cashier's or certified check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Mellon Bank  
EPA Region 8  
(Regional Hearing Clerk)  
Lockbox 360859  
Pittsburgh, PA 15251-6859

10. Respondent agrees to mail a copy of the check simultaneously to the following:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
999 19th Street, Suite 300  
Denver, Colorado 80202-2466

and to:

Amy Swanson, Enforcement Attorney  
Legal Enforcement Program (8ENF-L)  
U.S. EPA Region 8

999 19th Street, Suite 300  
Denver, Colorado 80202-2466

11. Respondent agrees to make three additional, consecutive quarterly payments, each in the amount of one thousand five hundred dollars (\$1,500), in the same manner as referenced above in paragraph nos. 9 and 10 and in accordance with the following schedule:

2<sup>nd</sup> payment of \$1,500 is due and must be received by not later than 9/1/06;  
3<sup>rd</sup> payment of \$1,500 is due and must be received by not later than 12/01/06; and  
4<sup>th</sup> payment of \$1,500 is due and must be received by not later than 3/1/07.

12. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.

13. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

14. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **GENERAL PROVISIONS**

15. The Consent Agreement shall not relieve Respondent of its obligation to comply with RCRA and the federal UST regulations.

16. Failure by Respondent to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

17. Nothing in the Consent Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of the Consent Agreement.

18. Respondent's undersigned representative certifies that he or she is fully authorized to enter into and bind Respondent to the terms and conditions of the Consent Agreement.

19. Each party shall bear its own costs and attorneys fees related to this matter.

20. The Parties agree to forward the Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

21. The Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and upon full satisfaction by the Parties, shall constitute a complete and full civil settlement of the specific violations alleged in the Complaint.

22. The Consent Agreement shall become effective upon the date of issuance of the Regional Judicial Officer's final order.

**SO CONSENTED AND AGREED TO:**

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.**

Date: 4/5/06

By: Michael T. Bryson for  
David J. Janik, Supervisory Attorney

Legal Enforcement Program

Date: 4-6-06

By: Sharon L Kercher  
Sharon Kercher, Director  
Technical Enforcement Program

**RED EAGLE OIL, INC.,**  
Respondent.

Date: 3.23.06

By: Gail Linze

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **RED EAGLE OIL, INC., (f/k/a Hinze, Inc.)** **DOCKET NO.: RCRA-08-2006-0001** was filed with the Regional Hearing Clerk on April 6, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on April 6, 2006, to:

Ms. Julie Hinze  
Retail Operations Manager  
Red Eagle Oil, Inc.  
P. O. Box 2468  
Cody, WY 82414

And pouch mailed to:

Honorable Barbara A. Gunning  
Office of Administrative Law Judges (1900L)  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

April 6, 2006



Tina Artemis  
Regional Hearing Clerk